

**Boundary Review of the East Boston Designated Port Area
Boston, MA**

**Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
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I. INTRODUCTION

In 1972, Congress passed the Coastal Zone Management Act (CZMA), which establishes a national policy to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation’s coastal zone for this and succeeding generations” and to “encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone...” [16 U.S.C. 1452, Sec. 303(1) and (2)]. In the CZMA, Congress made declarations of national policy elements and encouraged states to develop management programs enforceable under state law to address these interests.

The Commonwealth established the Massachusetts Office of Coastal Zone Management (CZM) and developed its coastal zone management program, which was approved by the National Oceanic and Atmospheric Administration in 1978. The program plan, as amended, contains the coastal policies and underlying state statutory and regulatory authorities, which articulate Massachusetts’ priorities for protection and management, habitat, ocean resources, ports and harbors, protected areas, public access, and water quality.

One of these interests established by Congress in the CZMA is the promotion of economic uses of coastal resources, including the priority consideration being given to coastal-dependent uses” and processes for the siting and preservation of port, transportation, and other commercial and industrial development “in or adjacent to areas where such development already exists.” The Designated Port Area (DPA) policy was established in 1978 within the Massachusetts Coastal Zone Management Plan after extensive consultation with state agencies, elected officials, municipal planners, non-government organizations, and representatives from the business community, local citizens, and others. The two central principles of the DPA policy are to (1) promote water-dependent industries as an important sector of the state’s economy and (2) prevent the loss of areas that have certain key characteristics that make them particularly well suited to water dependent industrial uses. The premise for this strategy is that it is sound public policy to maximize use of areas currently suited for water-dependent industrial uses and avoid the conversion of these areas to incompatible residential, commercial, and recreational uses, so that future marine industrial uses will not have to develop new areas for such use. The impact and expense of developing new marine industrial locations—including dredging, bulk-heading, building docks, development of transportation, power, and water infrastructure—are very high in terms of both economic and environmental costs, and such proposals are met with major concerns and opposition.

Under the Designation of Port Areas regulations at 301 CMR 25.00, CZM is responsible for mapping, interpreting, and periodic review of DPA boundaries. The purpose of the DPA boundary review process is to determine whether a DPA boundary should remain as it is currently established or whether it should be modified to more appropriately protect and promote the goals of DPA policy. DPA boundaries are reviewed in accordance with the procedures set forth in the Designation of Port Area regulations at 301 CMR 25.00.

II. THE DPA PROGRAM

DPAAs are geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine

transportation or the withdrawal or discharge of large volumes of water. These water-dependent industrial uses vary in scale and intensity but share similar needs for infrastructure with three essential components: (1) a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; (2) backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and (3) land-based transportation and public utility services appropriate for general industrial purposes.

This combination of industrial attributes is found in a very limited and diminishing portion of the coastal zone, and particularly few areas are of sufficient contiguous extent to invite concentrations of related businesses and/or large-scale facilities. Because economic, environmental, and social factors now virtually preclude further development of such an intensive nature, these marine industrial coastal areas are protected to assure that the long-term needs of these water-dependent industries are accommodated. Therefore, state policy seeks to prevent these areas from becoming irretrievably committed to, or otherwise significantly impaired by, non-industrial or non-water dependent types of development which could be sited elsewhere. Accordingly, within DPAs, state policy encourages water-dependent industrial use and, on tidelands subject to the jurisdiction of laws and regulations, limits or prohibits other uses except for compatible public access and certain industrial, commercial, and transportation activities that can occur without significant detriment to the capacity of DPAs to accommodate water-dependent industrial use in the future.

After the establishment of the DPA policy and the physical boundaries of the DPAs in 1978, the legal framework was further developed through a succession of regulatory measures. In 1979, the Department of Environmental Protection (DEP) incorporated DPA rules into its Waterways regulations under M.G.L. Chapter 91, with provisions to protect water-dependent industrial uses on the water-side areas of DPAs. In 1984, the legislature expanded the Chapter 91 licensing authority to include filled tidelands, and DPA jurisdiction was extended to include upland areas. In 1994, the Designation of Port Area regulations at 301 CMR 25.00 were promulgated to set forth the procedure for establishing and modifying DPA boundaries.

III. EAST BOSTON DPA BOUNDARY REVIEW PROCESS

Since the East Boston DPA boundary was originally established in 1978, there has been one review of it using the designation standards found at 301 CMR 25.04 in 2003 and a separate modification of the boundary in 2008. However, the previous review in 2003 did not include Sub-Area 4, as identified in the 2002 review report. By contrast, the current review is considering the entirety of the East Boston DPA, which is depicted in Figure 1.

In January 2020, in accordance with 301 CMR 25.03, the Boston Planning & Development Agency (BPDA) submitted a request to CZM to review portions of the East Boston DPA boundary. After evaluating the review, CZM determined that a review of the entire DPA, inclusive of land and water, was warranted. Prior to the publication of CZM's notice of intent to review the boundary, which initiates the review process, the BPDA requested a delay due to the developing COVID-19 health emergency. Simultaneously, local and state declarations of states of emergency related to the pandemic necessitated the postponement of the review. After the successful completion of multiple virtual public engagement processes, the BPDA requested that CZM proceed with the review. In consultation with the BPDA and other stakeholders, CZM issued its notice of intent to review the East Boston DPA boundary on February 10, 2021. A virtual public information meeting was held on February 23,

2021 and the formal 30-day public comment period closed on March 12, 2021. The consultation, which typically lasts up to six months, was extended for an additional two months based upon mutual agreement between the BPDA and CZM to complete the process.

To inform the DPA boundary review process, CZM conducted the consultation process required by 301 CMR 25.03(4). CZM reviewed comments submitted and met with property owners, city officials, state agency partners, and interested constituents. CZM also conducted site visits and reviews of available plans, permits, and licenses applicable to the DPA review area. Throughout the course of the review, CZM received formal and informal comments from DPA property owners, the public, local organizations and City and state agencies. CZM considered all comments in the context of the policy and regulatory framework that guides the review. Many commenters provided substantive information regarding history, uses, constraints, impacts, and other features of the existing DPA which was particularly useful in the assessment.

Notice of this designation report, a public hearing, and a 30-day public comment period will be included in the December 22, 2021 edition of the *Environmental Monitor*, published in a local newspaper of general circulation and distributed to those identified in 301 CMR 25.06(5). A final decision will be issued pursuant to 301 CMR 25.03(4) and (5) within 60 days of the close of the public comment period.

IV. EAST BOSTON DPA

East Boston, which was incorporated into the City of Boston in 1822, has evolved through the filling around five islands. In the 1800s, East Boston became one of the leading ports and shipbuilding areas of the United States because of its shipbuilding and servicing industries along its waterfront, coupled with the construction of a railroad terminal near Maverick Square. The construction of clipperships in the Donald McKay Shipyard and production of some of the first steel-hulled sailing ships and iron steamships ensured East Boston remained at the forefront of the global shipping industry through the early 1900s. At this time, space restrictions associated with railroad track use made rail transport a less viable option compared to truck and automobile transportation.

The unique geographic features of East Boston limit backland space in most areas of the DPA. As a result, large port operations, such as container, breakbulk, and other terminals are not present and unlikely to be developed. However, the water-dependent industrial uses currently located in the East Boston DPA – barge and water transportation services, construction staging and material fabrication, tugboat operations, small vessel supply and repair, and marine robotics – provide critical support for other maritime activities throughout the Port of Boston, which is an economic driver for all New England. The Port of Boston is the oldest continuously active major port in the Western Hemisphere and handles more than 13 million metric tons of containerized and bulk cargo per year. The Port supports more than 66,000 jobs annually and contributes more than \$8.2 billion to the local, regional, and national economies.

The development of the offshore renewable energy industry presents a growing economic opportunity for the Commonwealth and specifically its designated port areas. Many underutilized properties within DPAs may be repurposed to meet the emerging industry's needs for manufacturing and fabrication, staging and pre-assembly, and operations and maintenance. Although these different sectors will each have varying demands in terms of proximity to lease areas, available acreage, and infrastructure, an increase in demand for land to support this industry is anticipated. Similar to its support for the Port

of Boston, the East Boston DPA may not be suitable for uses such as construction bases/marshalling or storage ports that require significant backland space, but it may be able to play a role in the operations and maintenance and service/repair aspects of the offshore renewable energy industry.

V. PLANNING UNITS FOR BOUNDARY REVIEW

The boundaries of DPAs are established by CZM in accordance with criteria governing the suitability of contiguous lands and waters to accommodate water-dependent industrial use, as appropriate to the harbor in question. The Designation of Port Area regulations at 301 CMR 25.00 define water-dependent industrial use to mean any use found to be such in accordance with the Waterways regulations at 310 CMR 9.12(2)(b).

As a general rule, CZM applies DPA boundary review criteria within the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control. DPA-related attributes vary across different parcels, such that the combined characteristics of associated parcels in the same general vicinity are not reflected accurately in the characteristics of any single property. For this reason, it is important that geographic areas proposed to be included in (or removed from) a DPA be sized and configured in a manner that allows consideration of all relevant factors affecting overall suitability to accommodate water-dependent industrial use. For this DPA review, CZM defined five planning units, forming coherent areas with groups of parcels that are delineated by shared physical, geographical, and land use characteristics, as described below and shown in Figure 2.

Because physical and functional characteristics are such that water-dependent industrial and non-water dependent industrial uses are frequently inter-mixed or co-occur, CZM considered the primary use of a planning unit to be that use to which a majority of that area is dedicated in determining whether an area was to be classified as water-dependent industrial. The Waterways regulations affirm this principle, recognizing that water-dependent industrial uses are permitted to include licensable accessory and supporting uses that co-occur and are compatible with water-dependent industrial uses. Accessory uses include parking facilities, access and interior roadways, administrative offices, and marine-oriented retail facilities. Supporting uses are industrial or commercial uses that provide direct economic or operational support for the water-dependent industrial use in the DPA and must be compatible with activities characteristic of a working waterfront and its backlands.

The East Boston DPA includes four distinct areas connected by water within the DPA from the McCardle Bridge around East Boston to Jeffries Point. As a result, the landside segmentation of the DPA lends itself naturally to the formation of planning units consistent with the original boundary review, including Border Street North (Sub-Area 1), Border Street Central (Sub-Area 2), and Border Street South (Sub-Area 3), with one exception. The sub-area of the DPA comprising the East Boston Shipyard and Jeffries Point, which was not included in the 2002 boundary review, contains planning units defined by their segregation of incompatible uses: the predominantly water-dependent industrial uses in the East Boston Shipyard planning unit and the residential, recreational, and buffer areas of the Jeffries Point planning unit.

Border Street North Planning Unit

The Border Street North planning unit comprises approximately eight acres of land within the DPA, almost all of which is subject to Chapter 91 jurisdiction, and almost seven acres of watersheet, generally located at 330-404 Border Street between Mario Umana Academy and South Shore Plaza. All seven

parcels within the planning unit are owned by Reinauer Transportation Companies, LLC and/or its subsidiaries and occupied primarily by water-dependent industrial users, including BTT Marine Construction, Boston Towing and Transportation, and various water-dependent industrial tenants such as Boston Blast & Finish, Great Lakes Dredge & Dock, and Westerbeke Marine Safety. The waterfront includes two wooden piers and two concrete piers that combine for seven berths with a range of depths 11-30 feet below mean lower low water (MLLW) with five buildings authorized by Waterway License No. 11884 issued in 2007. The owner has developed conceptual plans to rebuild the planning unit into a more cohesive marine campus to better support water-dependent industrial and accessory uses and accommodate Supporting DPA Uses.

Border Street Central Planning Unit

The Border Street Central planning unit comprises approximately 22 acres of DPA land and water, including the area commonly referred to as Liberty Plaza. Generally located at 170-282 Border Street, this planning unit of the East Boston DPA includes a mix of ownership and uses. Besides the commercial uses at Liberty Plaza such as Shaw's, Kappy's, Marshalls, and McDonald's, the planning unit, which is generally flat, includes Wigglesworth Machinery at 276 Border Street and industrial structures that are now vacant or occupied by commercial uses. Most of the shoreline is developed with bulkhead and riprap and includes two dilapidated piers in the northern half of the planning unit. The northern-most of these, located behind Wigglesworth Machinery, has been documented to be the site of a vessel dismantling operation. The southern pier, which is seaward of Kappy's, is part of the area leased by C. White Marine, Inc., whose operations now include two crane barges, a commercial dive barge, a push boat, work skiffs, and several land cranes. The majority of Liberty Plaza is subject to Waterways License No. 6757, which enabled the development of the Shaw's as a Supporting DPA Use for the water-dependent industrial uses on-site, including C. White Marine, Inc. Large tractor-trailers regularly make deliveries to the various users across the planning unit. Vehicles are able to access the waterfront (and rear of commercial buildings) generally between the parking lots serving the Shaw's and retail strip. The building at 276 Border Street has access directly from Border Street to its front, but also benefits from an access easement from Border Street between the parking lots associated with Shaw's and the perpendicular retail strip around the Shaw's and to the rear of 276 Border Street. This is also how the property seaward of 276 Border Street is accessed. Vehicles are also able to circulate the entire site using a paved roadway at the southern end of the retail strip before turning back into the parking lot to exit onto Border Street. The access from Border Street to the waterfront and water-dependent industrial uses, including the easement, are critical to the viability of the water-dependent industrial uses within this planning unit.

Border Street South Planning Unit

The approximately 14-acre Border Street South planning unit, located between the Boston East and Eddy developments, was a part of Atlantic Works and still retains many of the structures and infrastructure of the historic shipbuilding operations. The Boston East DPA site, located at the northern edge of the DPA, was the subject of the 2002 boundary review, and its capacity to accommodate water-dependent industrial uses was significantly improved as a result of the Secretary's Decision on Part II of the 2009 Amendment to the East Boston Municipal Harbor Plan. These improvements included removal of dilapidated pile fields, restoration of seawalls and adjacent surfaces, and regrading and remediation. The site is currently unoccupied except for a community garden, but it is being marketed for water-dependent industrial uses in accordance with Waterway License No. 14492 issued in 2017. The adjacent sites at 60 & 80 Border Street feature historically industrial structures; 60 Border Street has a mix of office and industrial uses that were previously used by Wigglesworth Machinery, while 80 Border Street includes space for artists, a daycare, and offices.

The parcels within the DPA on New Street were not part of the previous boundary review because they were used by Boston Towing & Transportation for water-dependent industrial uses that were voluntarily discontinued at this site (and consolidated with their operations at 330-404 Border Street) in 2013. Intermittent uses of the site, which has three piers, have included temporary boat storage (both in-water and on-land). The Secretary's Decision on Part I of the 2009 Amendment to the East Boston Municipal Harbor Plan, regarding the proposed redevelopment of 6-26 New Street, required that all pile fields both within the DPA and outside of the DPA at the project site be removed and that access to the adjacent site in the DPA be provided via a truck route. The required truck route is included in the Waterways license for the 6-26 New Street development. Current water depths vary across the planning unit, but certain areas have historically authorized dredge depths of 40 feet below MLLW.

East Boston Shipyard Planning Unit

The East Boston Shipyard planning unit is composed of the Boston Harbor Shipyard & Marina, which is owned by Massport and partially subject to a memorandum of understanding (MOU) between Massport and the Department of Environmental Protection as it relates to Chapter 91. The planning unit is occupied by: water-dependent industrial uses, including Blue Atlantic Fabricators, Sea Machines Robotics, and Boston Pilots, which are the primary occupants of the planning unit; a marina authorized by the MOU and a collection of supporting and temporary uses. The shipyard includes five piers of varying construction material and conditions and a former graving dock across its developed shoreline, all of which provide access to berthing areas up to 45 feet below MLLW.

Jeffries Point Planning Unit

The Jeffries Point Planning Unit includes Massport's Navy Fuel Pier, which is an edge buffer area pursuant to the 1997 Community Mitigation Agreement with the East Boston community; the city block bound by Marginal, Jeffries, and Sumner Streets; and Jeffries Yacht Club, the oldest chartered yacht club on the eastern seaboard. Though water-dependent industrial uses historically operated in the planning unit, the area is now predominantly occupied by residential uses and recreational open space adjacent to a shoreline developed with riprap and bulkhead. The floating docks associated with Jeffries Yacht Club are surrounded by generally shallow depths.

VI. CZM REVIEW

Pursuant to 301 CMR 25.00, CZM employs a two-step review process when evaluating planning units for inclusion within a DPA boundary. The first step assesses whether planning units meet the eligibility for review criteria according to 301 CMR 25.03(2). These criteria include whether any area within a DPA: 1) has been subject to a designation decision within the previous five years; 2) contained active water-dependent industrial use throughout the previous five years; 3) was requested for exclusion from review by the City or other municipal body; and 4) is entirely bounded by existing DPA lands and/or waters. If a planning unit meets any of these criteria, that area is not eligible for further review and the second step of the review process is not applied. For those ineligible planning units, the DPA boundary does not change. If a planning unit is not disqualified from review by any of these criteria, it is eligible for review and proceeds to the second step of the review process.

The second step of the review process evaluates planning units with respect to their compliance with the designation standards for waters (301 CMR 25.04(1)) and for lands (301 CMR 25.04(2)). The designation standards for waters include two criteria governing suitability to accommodate water-dependent industrial use. The designation standards for waters require that the water area 1) must

include or be contiguous with other DPA waters that include both a navigable channel with a design depth of at least 20 feet deep and a substantially developed shoreline which creates a functional connection to a land area meeting the standards of 301 CMR 25.04(2); and 2) must be of a configuration, size, and location appropriate for direct utilization of the water. Waters must exhibit both criteria to remain in the DPA.

The designation standards for lands include four criteria governing physical suitability to accommodate water-dependent industrial use pursuant to 301 CMR 25.04(2). The four physical suitability criteria require that a planning unit 1) include a substantially developed shoreline which creates a functional connection to a waterway; 2) lie in close proximity to road or rail links and water and sewer facilities; 3) exhibit a topography that is conducive to industrial use; and 4) exhibit a use character that is predominantly industrial in nature or reasonably capable of becoming so. As with the designation standards for water, a planning unit must exhibit all four criteria to remain in or be included within the DPA. If a planning unit exhibits all four of the physical suitability criteria, the DPA boundary does not change in that area. Alternatively, in the case of areas reviewed that are currently outside a DPA boundary but that exhibit all four of the physical suitability criteria, the DPA boundary would change to include the area. If a planning unit lacks one of more of the physical suitability criteria, it is removed from the DPA.

The request for the review from the BPDA cited, among other reasons, the need to reduce the present and future flood vulnerability of certain areas of the East Boston DPA, especially along Border Street. Numerous comments on CZM's notice of intent to review the boundary agreed with this goal but suggested a lack of clarity regarding the permissibility of certain flood control structures with DPAs, especially those structures integrated with other co-beneficial uses, such as open space. As noted above, the criteria for inclusion in a DPA do not include flood vulnerability or climate resilience. Rather, per 310 CMR 9.12(2)(b)(7), shore protection structures and flood, water level, and tidal control facilities are determined to be water-dependent-industrial, provided they associated with the operation of a Designated Port Area. Supporting DPA Uses, which are commercial or industrial uses that provide direct economic or operational support, may occupy 25% of a project site, but cannot be uses that give rise to conflict with port operations or excessively consume port space.

VII. ELIGIBILITY REVIEW

Based on the eligibility for review standards at 301 CMR 25.03(2)(a) through (d), certain areas within the DPA are not eligible for review if they meet any of the four criteria.

For the first criterion, CZM has determined that no portion of the East Boston DPA has been the subject of a designation decision under 301 CMR 25.03(5) within the previous five years. Therefore, the five planning units within the DPA area under review (Figure 2) are eligible for review based on 301 CMR 25.03(2)(a).

The criterion at 301 CMR 25.03(2)(b) states that any area that consisted primarily of water-dependent industrial use throughout the last five years is not eligible for review. As indicated in the regulations, in applying 301 CMR 25.03(2)(b), CZM considered the primary use within a given area to be the use to which a majority of the planning unit is dedicated. For this criterion, CZM considered first, whether water-dependent industrial use had occurred throughout the previous five years; and second, whether the water-dependent industrial use, if present, was the primary use for a given planning unit. Based on the review, this criterion was met by three planning units: Border Street North, Border Street Central,

and East Boston Shipyard. The Border Street North and East Boston Shipyard planning units are composed primarily of water-dependent industrial uses and have been so throughout the previous five years. Two water-dependent industrial uses currently operate in the Border Street Central planning unit, one of which is confirmed to have been operating throughout the previous five years. These two water-dependent industrial uses occupy almost the entire shoreline of the planning unit and their viability is dependent on access from Border Street across the surface parking lots within the planning unit. Further, a significant portion of the Border Street Central planning unit is licensed as a Supporting DPA Use that provides direct economic support to water-dependent industrial use(s) within the planning unit in accordance with the special conditions of Waterways license No. 6757. As a result, these three areas do not meet the criterion for eligibility for review pursuant to 301 CMR 25.03(2)(b) and were not further analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. The boundary of the East Boston DPA should not change in the area of the Border Street North, Border Street Central, and East Boston Shipyard planning units.

Pursuant to 301 CMR 25.03(2)(c), areas recommended for exclusion by the City or municipal body shall not be eligible for review. No areas were recommended for exclusion by the City of Boston. Therefore, the five planning units within the East Boston DPA are eligible for review based upon 301 CMR 25.03(2)(c).

Any area within a DPA that is entirely bounded by existing DPA lands or waters is ineligible for review pursuant to 301 CMR 25.03(2)(d). This criterion is intended to avoid conflict that could result from incompatible uses being developed in the middle of an otherwise substantially water-dependent industrial use area. This scenario could arise if a portion of the DPA that is otherwise completely surrounded by DPA lands is removed from the DPA. Because the DPA boundary review includes the watersheet, as well as roads within and surrounding the DPA, no such isolated area is under review, and this scenario is avoided. Therefore, all planning units within the DPA are eligible for review based upon the criterion at 301 CMR 25.03(2)(d).

The Border Street South and Jeffries Point planning units meet all of the eligibility criteria for review (Figure 3) and are therefore subject to the designation criteria and analysis for inclusion in the East Boston DPA described below.

VIII. DESIGNATION CRITERIA AND ANALYSIS

The DPA regulations requirement that an area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use at 301 CMR 25.04(2)(a) through (d). Similarly, the DPA regulations require that an area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use at 301 CMR 25.04(1)(a) and (b). The following contains a synopsis of CZM's analysis and findings of each planning unit's conformance with the criteria for land and water in 301 CMR 25.04. The next section of this report concludes with a summary of the planning units' conformance and CZM's recommendation for continued inclusion in the DPA.

Border Street South Planning Unit

Pursuant to 301 CMR 25.04(2)(a), any area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially

developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. A significant extent of the shoreline in the Border Street South planning unit features piers, wharves, bulkheads and other structures, all of which allow for the berthing of vessels or withdrawal/discharge of water. Though the planning unit has not generally accommodated water-dependent industrial uses since 2013, intermittent uses have demonstrated sufficient waterside infrastructure and connection between land and water via a developed shoreline, including a marine railway. Therefore, CZM finds that the Border Street South planning unit meets the criterion for a substantially developed shoreline that provides a functional connection with DPA water area at 301 CMR 25.04(2)(a)

The second criterion for determining suitability of a land area for industrial use, pursuant to 301 CMR 25.04(2)(b), is that the land must lie in reasonable proximity to: an established road or rail link that leads to a major trunk or arterial route; and water and sewer facilities that are capable of supporting general industrial use. Anecdotal information provided by property owners and other stakeholders prior to and during the consultation process suggest that recent changes to the roadways, namely their width and turning radii, challenge truck access to the area, which is no longer served by active rail links. However, additional information collected from the City of Boston's Transportation Department, as well as visual evidence of truck usage of Border and New Streets, indicate that while there may be challenges for trucks on urban roadways, the planning area is adjacent to and served by roadways leading to major arterial routes, namely the Massachusetts Turnpike and Route 1A. Further, this planning unit is also served by a truck access route across 6-26 New Street, which was a provision of Secretary's Decision on Part I of the 2009 Amendment to the East Boston Municipal Harbor Plan and a special condition of the Waterways license for the 6-26 New Street development. Additionally, the Boston Water and Sewer Commission serves the area with both water and sewer services that support general industrial use. Based on this analysis, CZM determines that the Border Street planning unit meets the criterion of 301 CMR 25.04(2)(b).

To accommodate water-dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use or is reasonably capable of becoming so (301 CMR 25.04(2)(c)). The Border Street South planning unit generally consists of filled tidelands that are low-lying and flat, including the Boston East DPA site, which was remediated and regraded pursuant to the Secretary's Decision on Part II of the 2009 Amendment to the East Boston Municipal Harbor Plan. Therefore, CZM concludes that the topography of the Border Street South planning unit is generally conducive to industrial use and therefore meets the criterion of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial or is reasonably capable of becoming so because it does not contain a dense concentration of: non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational, or other uses that would unavoidably be destabilized if commingled with industrial activity (301 CMR 25.04(2)(d)). The land use character of the areas around the sections of the East Boston DPA along Border and New Streets is increasingly residential; the Border Street South planning unit is bound by two relatively recent residential developments, Boston East and the Eddy, which were facilitated by amendments to the East Boston Municipal Harbor Plan. However, as noted in the 2003 designation decision, the regulations are referring to the land use character of the area within the DPA, not the area around it. Decisions on the amendments to the Municipal Harbor Plans, as well as the Waterways licenses for these residential developments, intend for this planning unit to support water-dependent industrial uses despite the increased concentration of residential uses adjacent to the DPA. Specifically, the licenses for both

Boston East and the Eddy required special conditions, such as glazed windows and disclosures of each project's adjacency to the DPA, to ensure the viability of future water-dependent industrial uses on the adjacent sites within the DPA. Though there are some commercial uses adaptively reusing some existing structures within the planning unit, the buildings themselves are industrial structures that retain some features beneficial to industrial uses. As a result, CZM finds that the Border Street South planning unit meets the use character criterion as required by 301 CMR 25.04(2)(d).

Jeffries Point Planning Unit

Pursuant to 301 CMR 25.04(2)(a), any area to remain in or be included in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. Though the planning unit does not support any water-dependent industrial uses currently, the shoreline is mostly developed with bulkheads and riprap and functionally connected to waters within the DPA. Therefore, CZM finds that the Jeffries Point planning unit meets the criterion for a substantially developed shoreline that provides a functional connection with DPA water area at 301 CMR 25.04(2)(a).

The second criterion for determining suitability of a land area for industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to: an established road or rail link that leads to a major trunk or arterial route; and water and sewer facilities that can support general industrial use. Similar to the Border Street South planning unit, rail access is not available at the Jeffries Point planning unit, but the public ways within and leading to the planning unit generally accommodate truck traffic, as demonstrated by the users within the East Boston Shipyard planning unit, and lead to arterial routes, specifically the Massachusetts Turnpike and Route 1A. Additionally, the Boston Water and Sewer Commission serves the area with both water and sewer services that support general industrial use. Based on this analysis, CZM determines that the Border Street planning unit meets the criterion of 301 CMR 25.04(2)(b).

To accommodate water-dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use or is reasonably capable of becoming so (301 CMR 25.04(2)(c)). The Jeffries Point planning unit generally consists of filled tidelands that are low-lying and flat with a gentle increase in grade to the historic uplands. Therefore, CZM concludes that the topography of the Jeffries Point planning unit is generally conducive to industrial use, and therefore meets the criterion of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial or is reasonably capable of becoming so because it does not contain a dense concentration of: non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational, or other uses that would unavoidably be destabilized if commingled with industrial activity (301 CMR 25.04(2)(d)). Though adjacent to the water-dependent industrial uses at the East Boston Shipyard, the land use character of the Jeffries Point planning unit is almost entirely residential, recreational, or Massport-owned edge buffer areas. These buffer areas are a neighborhood amenity used for passive recreation and were created to benefit the East Boston community as mitigation for the impacts of Logan International Airport; their conversion back to industrial use is not reasonably foreseeable. Similarly, the residential uses, recreational open spaces, and yacht club are unlikely to be removed or converted with relative ease to industrial use, but these uses could be destabilized if comingled with industrial activity. As a result,

CZM finds that the Jeffries Point planning unit does not meet the use character criterion as required by 301 CMR 25.04(2)(d).

DPA Water Areas

For the DPA boundary review, CZM completed the above analysis of land areas before applying the criteria of 301 CMR 25.04(1) in order to understand how the water area in the East Boston DPA is currently used in regard to water-dependent industrial uses and compatibility within the DPA. Should any water area not meet the criteria, CZM would return to the review of eligible planning units of land to determine if the criterion for a functional connection to water within a DPA were met.

This review excludes water areas contiguous with land areas that have been determined by this DPA boundary review to be ineligible for further review under 301 CMR 25.03(2)(b) above, as it is presumed that these areas provide and support the necessary functional connection to the water-dependent industrial uses within those planning units. These areas include all channels and any water area lying between these channels and the land areas determined to be ineligible for review. Because the Border Street North, Border Street Central, and East Boston Shipyard planning units were excluded from the review based upon 301 CMR 25.03(2)(b), the adjacent water areas were not reviewed.

Pursuant to 301 CMR 25.04(1)(a), an area of water shall be included or remain in the DPA if and only if that area includes, or is contiguous with, other DPA waters that include: 1) a navigable entrance or main channel with a design depth of at least 20 feet; and 2) a shoreline that has been substantially developed and has a functional connection to land within the DPA. Further, water within a DPA must also be of a configuration, size, and location appropriate for the maneuvering of vessels, the placement of intake/outfall structures, or other activities directly utilizing the water, as directed by 301 CMR 25.04(1)(b). The DPA must include all channels and mooring and turnaround areas within or serving as access channels to land or water within a DPA and any water area lying between an entrance or main channel and any land or water including in a DPA. The water adjacent to the Border Street South planning unit is contiguous with DPA waters that include the federal navigation channel through Boston's Inner Harbor, which has depths greater than 20 feet, and is functionally connected to land that meets the criteria for inclusion in the DPA at 301 CMR 25.04(2). As demonstrated by both the historic uses of the parcels and the intermittent use of the piers within the planning area for docking, the water area is of a configuration, size, and location appropriate for maneuvering and berthing vessels. As a result, CZM determines that the water area adjacent to the Border Street South planning unit is in substantial conformance with the criteria for inclusion in the East Boston DPA.

As a result of the review of the Jeffries Point planning unit, the water within the DPA adjacent to this planning unit is no longer between land within the DPA and an entrance or main channel. However, the water is contiguous with other DPA waters that have a design depth of greater than 20 feet, meaning that it satisfies the requirements in 301 CMR 25.04(1)(a). Further, this area of water is also of a configuration, size, and location appropriate for maneuvering or berthing of vessels, as demonstrated by the utilization of the water by vessels of various sizes and nearby mooring areas, and it therefore satisfies the requirements in 301 CMR 25.04(1)(b). Based upon this analysis, CZM concludes that the water area within the DPA adjacent to the Jeffries Point planning unit is in substantial conformance with the criteria governing suitability of the water to accommodate water-dependent industrial use for inclusion in the East Boston DPA.

IX. CONCLUSIONS AND RECOMMENDATIONS

The DPA regulations direct that an area of land or water reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with all of the criteria governing suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question.

The Border Street North, Border Street Central, and East Boston Shipyard planning units did not meet the eligibility criterion for review pursuant to 301 CMR 25.03(2)(b), as they have been in active water-dependent industrial use over the past five years. Therefore, they were not analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. CZM concludes that these planning unit should remain in the DPA.

The Border Street South planning unit is eligible for review and CZM's analysis determined that the planning unit is in substantial conformance with the suitability criteria. In addition, the water area adjacent to this planning unit also meets the designation standards, so CZM concludes that the Border Street South planning unit should remain in the East Boston DPA.

The Jeffries Point planning unit is eligible for review and CZM's analysis determined that while the planning unit meets the physical suitability criteria, namely a topography conducive to industrial use, proximity to established road/rail links and water/sewer facilities, and a developed shoreline with a functional connection to DPA waters, the land area does not exhibit a use character that is predominantly industrial, but rather contains a dense concentration of residential and recreational uses. As a result, CZM concludes that the Jeffries Point planning unit, as well the sections of Jeffries, Marginal, and Sumner Streets that serve these parcels, should be removed from the East Boston DPA. However, the water area adjacent to this planning unit continues to meet the designation standards, so CZM concludes that this water area should remain in the East Boston DPA.

With the removal of the Jeffries Point planning unit, the total land area of the East Boston DPA subject to this review decreases from 97.18 acres to 88.57 acres.

Pursuant to this review, a revised East Boston DPA boundary reflecting the findings of this Boundary Review Report is shown on the map, Figure 4.

X. FIGURES

Figures referenced in the report are included in the following pages.

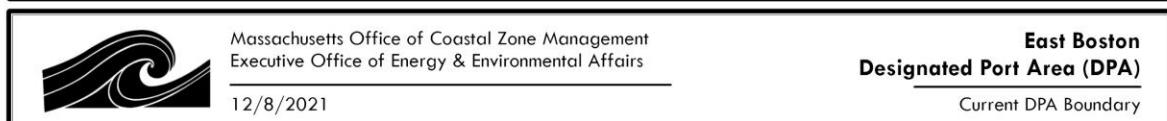
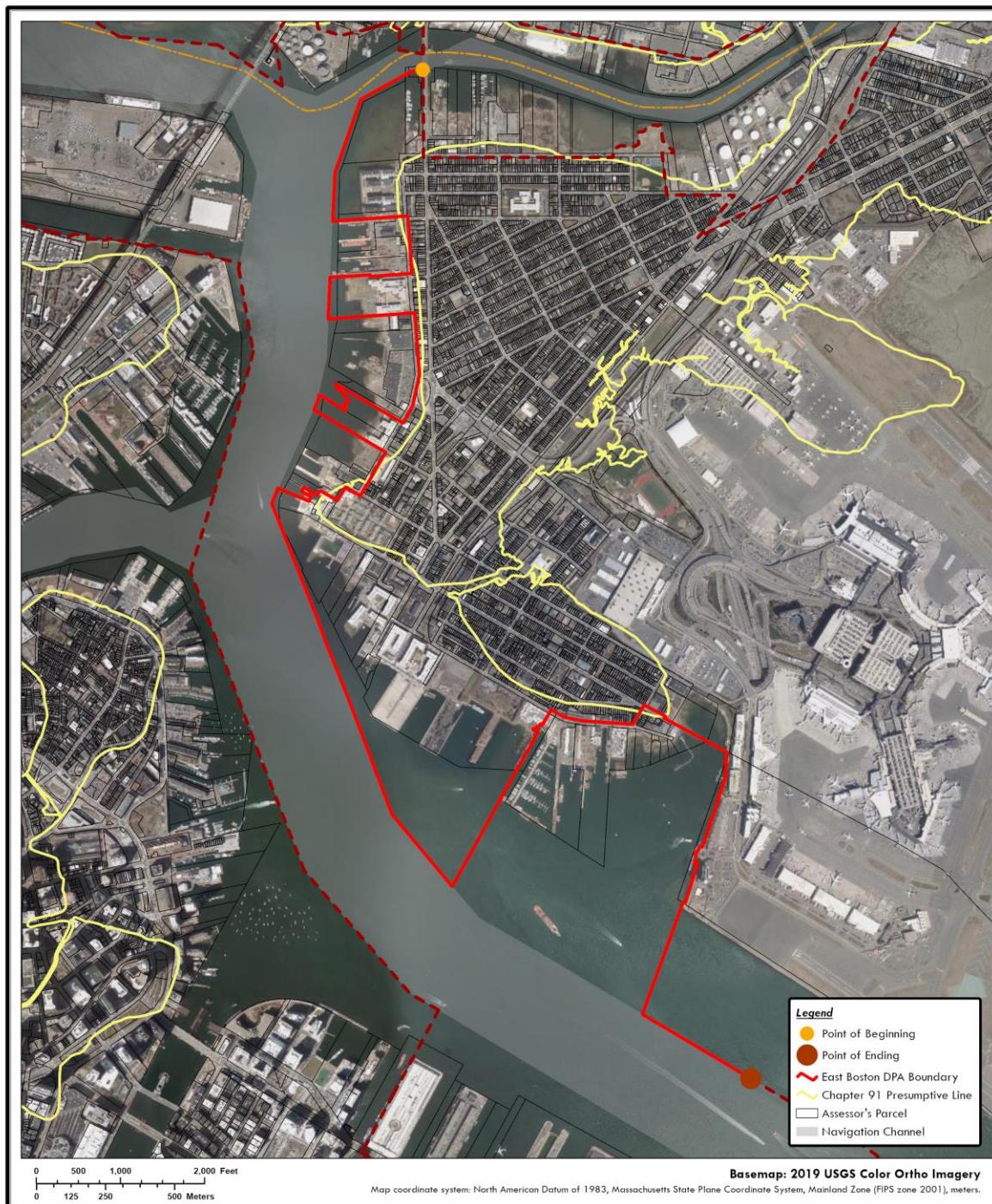


Figure 1 – Current East Boston DPA boundary map

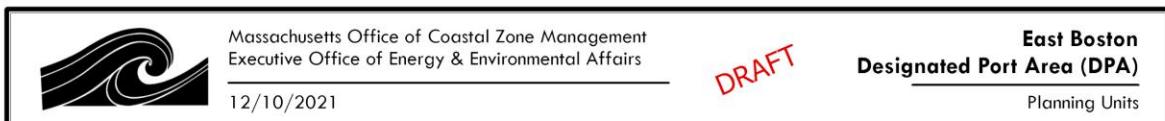


Figure 2 – Planning units within East Boston DPA boundary review

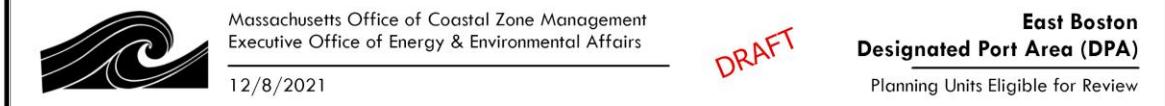


Figure 3 – Planning units eligible for review



Figure 4 – Revised East Boston DPA boundary map